

17 C.F.R. § 229.103

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Effective: [See Text Amendments]

Code of Federal Regulations [Currentness](#)

Title 17. Commodity and Securities Exchanges

Chapter II. Securities and Exchange Commission

↗ [Part 229](#). Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975--Regulation S-K ([Refs & Annos](#))

↗ [Subpart 229.100](#) Business

➔ **§ 229.103 (Item 103) Legal proceedings.**

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such

other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

A. Such proceeding is material to the business or financial condition of the registrant;

B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive

17 C.F.R. § 229.103

of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

SOURCE: [47 FR 11401](#), March 16, 1982; [67 FR 246](#), Jan. 2, 2002; [67 FR 13536](#), March 22, 2002; [67 FR 57287](#), Sept. 9, 2002; [68 FR 4831](#), Jan. 30, 2003; [68 FR 5127](#), Jan. 31, 2003; [68 FR 5999](#), Feb. 5, 2003; [68 FR 18817](#), April 16, 2003; [68 FR 36663](#), June 18, 2003; [68 FR 64969](#), Nov. 17, 2003; [68 FR 67009](#), Nov. 28, 2003; [68 FR 69221](#), Dec. 11, 2003; [69 FR 15615](#), March 25, 2004; [71 FR 76595](#), Dec. 21, 2006; [71 FR 78350](#), Dec. 29, 2006, unless otherwise noted.

AUTHORITY: [15 U.S.C. 77e](#), [77f](#), [77g](#), [77h](#), [77j](#), [77k](#), [77s](#), [77z-2](#), [77z-3](#), [77aa\(25\)](#), [77aa\(26\)](#), [77ddd](#), [77eee](#), [77ggg](#), [77hhh](#), [77iii](#), [77jjj](#), [77nnn](#), [77sss](#), [78c](#), [78i](#), [78j](#), [78l](#), [78m](#), [78n](#), [78o](#), [78u-5](#), [78w](#), [78ll](#), [78mm](#), [80a-8](#), [80a-9](#), [80a-20](#), [80a-29](#), [80a-30](#), [80a-31\(c\)](#), [80a-37](#), [80a-38](#), [80av39](#), [80b-11](#), and [7201 et seq.](#); and [18 U.S.C. 1350](#), unless otherwise noted.; Section 229.303 is also issued under secs. 3(a) and 401(a), [Pub.L. No. 107-204](#), [116 Stat. 745](#).; Section 229.307 is also issued under secs. 3(a) and 302, [Pub.L. No. 107-204](#), [116 Stat. 745](#).; Section 229.401 is also issued under secs. 3(a) and 407, [Pub.L. 107-204](#), [116 Stat. 745](#).; Section 229.406 is also issued under secs. 3(a) and 406, [Pub.L. 107-204](#), [116 Stat. 745](#).; Section 229.601 is also issued under secs. 3(a) and 406, [Pub.L. 107-204](#), [116 Stat. 745](#).

17 C. F. R. § 229.103, **17 CFR § 229.103**

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17 C.F.R. § 229.401

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Title 17. Commodity and Securities Exchanges

Chapter II. Securities and Exchange Commission

▢ [Part 229](#). Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975--Regulation S-K ([Refs & Annos](#))

▢ [Subpart 229.400](#) Management and Certain Security Holders

➔ **§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.**

<For compliance date(s) of (b), Instruction 3, see [73 FR 934](#).>

(a) Identification of directors. List the names and ages of all directors of the registrant and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; describe briefly any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected as a director or nominee.

Instructions to Paragraph (a) of Item 401: 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such shall be named in response to this Item. In this regard, with respect to proxy statements, see Rule 14a-4(d) under the Exchange Act (§ 240.14a-4(d) of this chapter).

3. If the information called for by this paragraph

(a) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. With regard to proxy statements in connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

(b) Identification of executive officers. List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and describe briefly any arrangement or understanding between him and any other person(s) (naming such person) pursuant to which he was or is to be selected as an officer.

Instructions to Paragraph (b) of Item 401: 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such shall be named in response to this Item.

3. The information regarding executive officers called for by this Item need not be furnished in

proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act (§ 240.14a-101 of this chapter) by registrants relying on General Instruction G of Form 10-K under the Exchange Act (§ 249.310 of this chapter); *Provided*, that such information is furnished in a separate item captioned "Executive officers of the registrant" and included in Part I of the registrant's annual report on Form 10-K.

(c) Identification of certain significant employees. Where the registrant employs persons such as production managers, sales managers, or research scientists who are not executive officers but who make or are expected to make significant contributions to the business of the registrant, such persons shall be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act or was exempt from section 13(a) by section 12(g)(2)(G) of such Act immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable.

(d) Family relationships. State the nature of any family relationship between any director, executive officer, or person nominated or chosen by the registrant to become a director or executive officer.

Instruction to Paragraph 401(d): The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) Business experience--

(1) Background. Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: Each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organiza-

tion in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. When an executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) Directorships. Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, [15 U.S.C. 80a-1, et seq.](#), as amended, naming such company.

Instruction to Paragraph (e) of Item 401: For the purposes of paragraph (e)(2), where the other directorships of each director or person nominated or chosen to become a director include directorships of two or more registered investment companies that are part of a "fund complex" as that term is defined in Item 22(a) of Schedule 14A under the Exchange Act (§ 240.14a-101 of this chapter), the registrant may, rather than listing each such investment company, identify the fund complex and provide the number of investment company directorships held by the director or nominee in such fund complex.

(f) Involvement in certain legal proceedings. Describe any of the following events that occurred during the past five years and that are material to an

evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant:

(1) A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities:

(i) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or

commodity or in connection with any violation of Federal or State securities laws or Federal commodities laws;

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this section, or to be associated with persons engaged in any such activity; or

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated.

(6) Such person was found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any Federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated.

Instructions to Paragraph (f) of Item 401: 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the regis-

17 C.F.R. § 229.401

trant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed, or ten days before definitive materials are filed in preliminary filing is not required, pursuant to Rule 14a-6 or 14c-5 under the Exchange Act (§§ 240.14a-6 and 240-14c-5 of this chapter)), as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by this paragraph (f) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(g) Promoters and control persons.

(1) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act ([15 U.S.C. 78m\(a\)](#) or [78o\(d\)](#)) for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, and which had a promoter at any time during the past five fiscal years, shall describe with respect to any promoter, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this Item that occurred during the past five years and that are material to a voting or investment decision.

(2) Registrants, which have not been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, shall describe

with respect to any control person, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this section that occurred during the past five years and that are material to a voting or investment decision.

Instructions to Paragraph (g) of Item 401: 1. Instructions 1. through 3. to paragraph (f) shall apply to this paragraph (g).

2. Paragraph (g) shall not apply to any subsidiary of a registrant which has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act for the twelve months immediately prior to the filing of the registration statement, report or statement.

[[47 FR 11401](#), March 16, 1982, as amended at [47 FR 55665](#), Dec. 13, 1982; [48 FR 19874](#), May 3, 1983; [49 FR 32763](#), Aug. 16, 1984; [52 FR 48982](#), Dec. 29, 1987; [59 FR 52695](#), Oct. 19, 1994; [68 FR 5127](#), Jan. 31, 2003; [68 FR 15354](#), March 31, 2003; [68 FR 18817](#), April 16, 2003; [68 FR 36663](#), June 18, 2003; [68 FR 67009](#), Nov. 28, 2003; [68 FR 69221](#), Dec. 11, 2003; [69 FR 9722](#), March 1, 2004; [70 FR 1594](#), Jan. 7, 2005; [70 FR 11528](#), March 8, 2005; [71 FR 53241](#), Sept. 8, 2006; [73 FR 958](#), Jan. 4, 2008]

SOURCE: [47 FR 11401](#), March 16, 1982; [67 FR 246](#), Jan. 2, 2002; [67 FR 13536](#), March 22, 2002; [67 FR 57287](#), Sept. 9, 2002; [68 FR 4831](#), Jan. 30, 2003; [68 FR 5127](#), Jan. 31, 2003; [68 FR 5999](#), Feb. 5, 2003; [68 FR 18817](#), April 16, 2003; [68 FR 36663](#), June 18, 2003; [68 FR 64969](#), Nov. 17, 2003; [68 FR 67009](#), Nov. 28, 2003; [68 FR 69221](#), Dec. 11, 2003; [69 FR 15615](#), March 25, 2004; [71 FR 76595](#), Dec. 21, 2006; [71 FR 78350](#), Dec. 29, 2006, unless otherwise noted.

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17 C.F.R. § 229.401

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17 C. F. R. § 229.401, **17 CFR § 229.401**

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